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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES
1981/1982 TERM

No. 81-6947

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff-Appellee,

v.

RICHARD VELASQUES,

Defendant-Appellant.

MOTION TO SUPPLEMENT ARGUMENT II OF JURISDICTIONAL STATEMENT

Defendant-Appellant, Richard Velasques, and herein after referred to as Defendant, hereby respectfully moves this Honorable Court to grant his Motion to Supplement Argument II of his Jurisdictional Statement and as grounds therefore states as follows:

1. That a recent decision by this Court has been decided which is similar to Defendant's case and Defendant now wishes the Court to consider its decision in such case when deciding his case also. The case is United States v. Ross, No. 80-2209, 72 L.Ed.2d 572, 102 S.Ct. ___, Decided June 1, 1982.

United States v. Ross, supra, involved a case where a defendant was dealing heroin out of his vehicle. An informant had reported that he had purchased some heroin from defendant Ross which was taken from the trunk of the vehicle. The informant stated that Ross had stated that he had more of the drug for sale in the vehicle. The Court ruled that these facts provided probable cause to search the vehicle.

In Defendant's, Richard Velasques, case there was no probable cause to believe that there were more drugs in the Defendant's vehicle and was so stated by the affiant and the informant in this case (Tr. 630-631, 694-695, 662-663). As the record shows, there was only a belief that there was more drugs at Defendant's home and that the marijuana that was seized in the Motel room was the only amount of drug that the Defendant had at that time as he so stated to the informant. This was different from the Ross case because Ross had stated that he had more drugs in the trunk of his vehicle.

Defendant's case also differs from United States v. Ross, supra in that it was pursuant to a warrant while the Ross case was a warrantless search. No probable cause was contained in the warrant. In fact the warrant and

affidavit only provided probable cause to search Defendant's house and not his vehicle. The prosecution did attempt to provide probable cause at the hearing (Tr. 709-715) but none of this was contained in the affidavit nor brought to the attention of a magistrate at the time of the search.

The Ross case also quotes Carroll v. United States, 267 U.S. 132 which was also cited by Defendant in his argument:

> Moreover, the probable cause determination must be based on objective facts that could justify the issuance of a warrant by a magistrate and not merely on the subjective good faith of the police officers. "[A]s we have seen, good faith is not enough to constitute probable cause. That faith must be grounded on facts within knowledge of the officer, which in the judgment of the court would make his faith reasonable." Carroll v. United States, at 161-162, 69 L.Ed. 543, 45 S.Ct. 280 (quoting Director General v. Kastenbaum, 263 U.S. 25, 28, 68 L.Ed. 146, 44 S.Ct. 32.

WHEREFORE, Defendant, respectfully requests that a writ of certiorari issue to review the judgment of the Supreme Court of Colorado and reverse that judgment and order a new trial excluding all evidence obtained from the illegal search and seizure of Defendant's vehicle.

DATED AUGUST 13, 1982.

Respectfully Submitted,

Richard Velasquez

Richard Velasquez, Pro Se #01756
Montrose, Colorado
P.O. Box 700 Unit 4
Canon City, Colorado 81212

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within LETTER TO THE COURT AND MOTIONS and MOTION TO SUPPLEMENT ARGUMENT II OF JURISDICTIONAL STATEMENT upon all parties herein by depositing the copies of same in the United States mail, postage prepaid, at Canon City, Colorado, Shadow Mountain Correctional Facility this 13th day of August 1982, addressed as follows:

David K. Rees, 1010
Assistant Attorney General
Office of the Attorney General
1525 Sherman Street, 3d Floor
Denver, Colorado 80203

And by certified mail to:

Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

Richard Velasquez

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